

REMARKS

Claims 1-28 are pending. Claims 1-18 and 28 are withdrawn from consideration.

The claims, drawings and specification are objected for using the British variant of the American English word "center." Claims 19-27 are rejected under 35 U.S.C. §101. Claims 21-24 are rejected under 35 U.S.C. §112, second paragraph. Claims 19-27 are rejected under 35 U.S.C. §102(e).

Applicants address these objections and rejections below.

I. OBJECTIONS:

The Office Action has objected to the claims, drawings and specification for including the British variant ("centre") of the American English word "center." Applicants kindly direct the Examiner's attention to M.P.E.P. §608.01 which indicates that Examiners should not object to the specification and/or claims in patent applications merely because Applicants are using British English spellings (e.g., colour) rather than American English spellings. It is not necessary to replace the British English spellings in the U.S. patent applications. There is no requirement that the English must be American English. Applicants kindly request the Examiner to withdraw these objections.

II. ELECTION/RESTRICTIONS:

The Office Action has requested Applicants to affirm in the present response of the election made to prosecute Group II (claims 19-27). Applicants hereby affirm to prosecute Group II (claims 19-27).

III. REJECTIONS UNDER 35 U.S.C. §101:

The Office Action has rejected claims 19-27 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Office Action (1/29/2008), page 4. In particular, the Office Action asserts that claim 19 is directed to different statutory classes of invention ("process" and "machine") as set forth in 35 U.S.C. §101. *Id.* As indicated above, Applicants amended claim 19 so that claim 19 is clearly directed to a method for filling orders for items using an order management

system. Accordingly, Applicants respectfully request the Examiner to withdraw the rejections of claims 19-27 under 35 U.S.C. §101.

As previously indicated, Applicants amended claim 19 so that claim 19 is clearly directed to a method for filling orders for items using an order management system. Claim 19 was not amended to overcome prior art. Hence, no prosecution history estoppel arises from the amendments to claim 19. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claim 19 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

IV. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH:

The Office Action has rejected claims 21-24 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Office Action (1/29/2008), page 5. In particular, the Office Action asserts that the phrase "and/or" in claims 21-23 causes these claims to be unclear and indefinite. *Id.* As indicated above, Applicants amended claims 21-23 to remove the "and/or" phrase.

Further, the Office Action rejects claim 24 under 35 U.S.C. §112, second paragraph, for including the phrase "the pre-selection" which has insufficient antecedent basis. Office Action (1/29/2008), page 5. Applicants amended claim 24 so that claim 24 depends from claim 23 instead of claim 19 thereby establishing sufficient antecedent basis.

As a result of the above, Applicants respectfully assert that claims 21-24 particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Consequently, Applicants respectfully assert that claims 21-24 are allowable under 35 U.S.C. §112, second paragraph, and respectfully request the Examiner to withdraw the rejections of claims 21-24 under 35 U.S.C. §112, second paragraph.

As previously indicated, Applicants amended claims 21-24 to correct typographical mistakes and to clarify the claimed subject matter. Further, Applicants amended claim 27 to correct a typographical mistake so that claim 27 is clearly directed to a method claim. Hence, claims 21-24 and 27 were not amended to overcome prior art. Hence, no prosecution history estoppel arises from the amendments to claims 21-24 and 27. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 21-24 and 27 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

V. REJECTIONS UNDER 35 U.S.C. §102(e):

The Office Action has rejected claims 19-27 under 35 U.S.C. §102(e) as being anticipated by Hirth et al. (U.S. Patent Application Publication No. 2003/0171962) (hereinafter "Hirth"). Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

The Office Action cites the Abstract and paragraphs [0038-0041] of Hirth as disclosing "associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces using a release to fulfillment object" as recited in claim 19. Office Action (1/29/2008), page 6. Applicants respectfully traverse.

Hirth instead discloses that a fulfillment coordination engine or system is used to coordinate the fulfillment of an order placed with a company by an originator of an order. [0038]. Hirth additionally discloses that after the order has been received, the

fulfillment coordination engine splits the order into one or more work packages based on a first set of rules or parameters (step 10). [0040]. Hirth further discloses that for example, if the order is for a good or product, the company can split the production procedure for producing the good or product into discreet work packages. [0040]. In addition, Hirth discloses a first work package can be for procuring raw materials, a second work package can be for shaping or forming the raw materials, a third work package can be for assembling the shaped materials into a final product, and the fourth work package can be for shipping the product. [0041].

Hence, Hirth discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters.

There is no language in the cited passages that discloses fulfillment centre objects. Neither is there any language in the cited passages that discloses associating one or more items in an order with one of a set of fulfillment centre objects. Neither is there any language in the cited passages that discloses associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces. Neither is there any language in the cited passages that discloses associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces using a release to fulfillment object.

Thus, Hirth does not disclose all of the limitations of claim 19, and thus Hirth does not anticipate claim 19. M.P.E.P. §2131.

The Office Action further cites paragraphs [0041-0042] of Hirth as disclosing "sending fulfillment instructions relating to one or more items associated with one of a first subset of fulfillment centre objects to a corresponding fulfillment centre, wherein the first subset of the fulfillment centre objects being defined for representing corresponding fulfillment centres" as recited in claim 19. Office Action (1/29/2008), page 6. Applicants respectfully traverse.

Hirth instead discloses a first work package can be for procuring raw materials, a second work package can be for shaping or forming the raw materials, a third work package can be for assembling the shaped materials into a final product, and the fourth work package can be for shipping the product. [0041]. Furthermore, Hirth discloses that after the order has been split into work packages, the fulfillment coordination engine assigns the work packages to partners based on a second set of rules or parameters (step 115). [0042].

Hence, Hirth discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters. Hirth further discloses that after the order has been split into work packages, the fulfillment coordination engine assigns the work packages to partners based on a second set of rules or parameters.

As stated above, there is no language in Hirth that discloses fulfillment centre objects. Neither is there any language in the cited passages that discloses a first subset of the fulfillment centre objects being defined for representing corresponding fulfillment centres. Thus, Hirth does not disclose all of the limitations of claim 19, and thus Hirth does not anticipate claim 19. M.P.E.P. §2131.

Additionally, the Examiner cites paragraphs [0041-0042] of Hirth as disclosing "sending ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects to a corresponding electronic marketplace, wherein the second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces" as recited in claim 19. Office Action (1/29/2008), page 6. Applicants respectfully traverse.

As stated above, Hirth instead discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters. Hirth further discloses that after the order has been split into work packages, the fulfillment coordination engine assigns the work packages to partners based on a second set of rules or parameters.

As stated above, there is no language in Hirth that discloses fulfillment centre objects. Neither is there any language in the cited passages that discloses sending

ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects. Neither is there any language in the cited passages that discloses sending ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects to a corresponding electronic marketplace. Neither is there any language in the cited passages that discloses a second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces.

Thus, Hirth does not disclose all of the limitations of claim 19, and thus Hirth does not anticipate claim 19. M.P.E.P. §2131.

Claims 20-27 each recite combinations of features of independent claim 19, and hence claims 20-27 are not anticipated by Hirth for at least the above-stated reasons that claim 19 is not anticipated by Hirth.

Claims 20-27 recite additional features, which, in combination with the features of the claims upon which they depend, are not anticipated by Hirth.

For example, Hirth does not disclose "in which a release to fulfillment object associated with a selected one of the fulfillment centre objects in the second subset comprise data representations for tracking orders in the electronic marketplace corresponding to the selected fulfillment centre object" as recited in claim 20. The Examiner cites paragraphs [0043, 0049 and 0076] of Hirth as disclosing the above-cited claim limitation. Office Action (1/29/2008), pages 6-7. Applicants respectfully traverse.

Hirth instead discloses that work tasks can also include the internal and/or external partners supplying the goods to the company. [0043]. Hirth further discloses that the delivery of a sales order (step 105) in an outbound fulfillment scenario can be executed by different, internal or external, partners in the fulfillment process. [0049]. Additionally, Hirth discloses that together with the operational services there are a variety of features to track, monitor and evaluate the business flow to extract performance indicators, which can be used as feedback to the execution to adjust the control parameters that are executing the request. [0076].

Hence, Hirth discloses that there are a variety of features to track, monitor and evaluate to extract performance indicators which can be used as feedback to the execution to adjust the control parameters that are executing the request.

There is no language in the cited passages that discloses a release to fulfillment object associated with a selected one of the fulfillment centre objects in the second subset comprise data representations for tracking orders in the electronic marketplace. Neither is there any language in the cited passages that discloses a release to fulfillment object associated with a selected one of the fulfillment centre objects in the second subset comprise data representations for tracking orders in the electronic marketplace corresponding to the selected fulfillment centre object.

Thus, Hirth does not disclose all of the limitations of claim 20, and thus Hirth does not anticipate claim 20. M.P.E.P. §2131

Furthermore, the Examiner cites paragraph [0041] of Hirth as disclosing "in which each fulfillment centre objects comprises means for representing one or more inventory and fulfillment centre priority" as recited in claim 21. Office Action (1/29/2008), page 7. Applicants respectfully traverse.

As stated above, Hirth instead discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters.

There is no language in the cited passage that discloses that each fulfillment centre object comprises means for representing one or more inventory and fulfillment centre priority. Thus, Hirth does not disclose all of the limitations of claim 21, and thus Hirth does not anticipate claim 21. M.P.E.P. §2131

Additionally, the Examiner cites paragraphs [0041 and 0083] of Hirth as disclosing "in which the means for representing one or more inventory and fulfillment centre priority in the second subset of fulfillment centre objects represents one or more of a null inventory and a low fulfillment centre priority" as recited in claim 22. Office Action (1/29/2008), page 7. Applicants respectfully traverse.

As stated above, Hirth instead discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters. [0041]. Hirth further discloses that the available-to-promise (ATP) service is used to check the availability of an order quantity of a product for supplying the product by a certain date. [0083]. Hirth additionally discloses that to meet the date and quantity requirements, the ATP service is able to adjust various parameters of a logistics process, including changing the steps of a logistics process, changing the partners/locations, changing the schedules, and changing the products. [0083].

Hence, Hirth discloses splitting an order into one or more work packages based on a first set of rules or parameters. Hirth further discloses checking the availability of an order quantity of a product for supplying the product by a certain date.

There is no language in the cited passages that discloses that the means for representing one or more inventory and fulfillment centre priority in the second subset of fulfillment centre objects represents one or more of a null inventory and a low fulfillment centre priority. Thus, Hirth does not disclose all of the limitations of claim 22, and thus Hirth does not anticipate claim 22. M.P.E.P. §2131

Further, the Examiner cites paragraphs [0041 and 0083-0085] of Hirth as disclosing "pre-selecting items for association with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority" as recited in claim 23. Office Action (1/29/2008), page 7. Applicants respectfully traverse.

As stated above, Hirth instead discloses a fulfillment coordination engine splitting an order into one or more work packages based on a first set of rules or parameters. [0041]. Hirth further discloses checking the availability of an order quantity of a product for supplying the product by a certain date. [0083]. Additionally, Hirth discloses a scheduling program that is a service that determines the schedules for every step of a logistics process, such as transport schedules, shipping schedules, etc. [0084]. Further, Hirth discloses that the product selection or

substitution service selects the correct product for a logistics process according to batches, serial numbers, shelf life expiration date, and stock determination. [0085].

There is no language in the cited passages that discloses pre-selecting items for association with one of the set of fulfillment centre objects. Instead, Hirth discloses checking the availability of an order quantity of a product as well as discloses substituting a customer's product selection. Neither is there any language in the cited passages that discloses pre-selecting items for association with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority. Thus, Hirth does not disclose all of the limitations of claim 23, and thus Hirth does not anticipate claim 23. M.P.E.P. §2131

Additionally, the Examiner cites Figure 5 and paragraph [0088] of Hirth as disclosing "in which the order management system comprises an administrator interface, and the method further comprises the step of an administrator using the administrator interface to confirm or over-ride the pre-selection of items for association with one of the set of fulfillment centre objects" as recited in claim 24. Office Action (1/29/2008), page 7. Applicants respectfully traverse.

Hirth instead discloses a service that adds logistics master data to the incoming orders if that type of data is not already present in the order and provides protocol data for the monitoring of the complete process. [0088].

There is no language in the cited passage that discloses an administrator using the administrator interface to confirm or over-ride the pre-selection of items for association with one of the set of fulfillment centre objects. Instead, Hirth discloses adding logistics master data to the incoming orders if that type of data is not already present in the order. Thus, Hirth does not disclose all of the limitations of claim 24, and thus Hirth does not anticipate claim 24. M.P.E.P. §2131

Further, the Examiner cites paragraphs [0010 and 0053-0055] of Hirth as disclosing "step of grouping items and in which the step of sending ordering information further comprises maintaining the grouping of the items when information corresponding to the grouped items is sent to the corresponding

electronic marketplace" as recited in claim 25. Office Action (1/29/2008), pages 7-8. Applicants respectfully traverse.

Hirth instead discloses that goods can be consolidated by obtaining goods from each of the partners to which a work package is assigned. [0010]. Hirth further discloses splitting an original order when different tasks and/or partners are necessary. [0053].

Hence, Hirth discloses assigning separate work packages to separate partners. Further, Hirth discloses splitting an original order when different tasks and/or partners are necessary.

There is no language in the cited passages that the step of sending ordering information further comprises maintaining the grouping of the items when information corresponding to the grouped items is sent to the corresponding electronic marketplace. Instead, the cited passages discuss splitting an original order and assigning separate work packages to separate partners. Thus, Hirth does not disclose all of the limitations of claim 25, and thus Hirth does not anticipate claim 25. M.P.E.P. §2131

As a result of the foregoing, Applicants respectfully assert that not each and every claim limitation was found within Hirth, and thus claims 19-27 are not anticipated by Hirth. M.P.E.P. §2131.

VI. CONCLUSION:

As a result of the foregoing, it is asserted by Applicants that claims 19-27 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD P.C.

Attorneys for Applicants

By: 

Robert A. Voigt, Jr.
Reg. No. 47,159

P.O. Box 50784
Dallas, TX 75201
(512) 370-2832

Austin_1 528408v.1